

A New Castle City Board of Adjustment Hearing took place on May 3, 2006 at 7 p.m. in the City of New Castle's Town Hall.

Members Present: Mayor John F. Klingmeyer
David Athey, City Engineer
James Harker, City Solicitor
Somasunderam Padmalingam (applicant)

The meeting was called to order at 7:04 p.m. by Mayor Klingmeyer. Roll call was taken. Mayor Klingmeyer read the Notice of Public Hearing that states, "An application has been filed by Somasunderam Padmalingam for property located 222 Chestnut Street, New Castle, Delaware, Parcel Number 21-015.20-037, seeking variances from the required minimum 25 foot rear setback to 19.1 feet in order to permit the construction of a one-story 12 by 15 foot addition to the rear of the residence under construction.

For the purpose of considering this application, the Board of Adjustment will hold a public hearing on May 3, 2006 at 7 p.m. in Old Town Hall, 2nd Floor, located at 2nd and Delaware Street, New Castle, Delaware."

Building Inspector Jeff Bergstrom was asked if the property had been properly posted. He responded that it had. The Mayor informed they had affidavit of publication from the NewsJournal of 4/18/06 and the Sundays NewsJournal.

Mr. Bergstrom then provided a background of the case. A plan was submitted showing the rear yard setback of 25 feet that was based on centerline data from Chestnut Street. During the course of construction monuments were discovered that might give a better indication of where property lines were located. The rear addition appeared to be 19 ft. off the rear property line and the engineer advised Dr. Padmalingam to come to the Board of Adjustment to request a variance.

Mr. Sean Tucker, counsel for Dr. Padmalingam, approached the Board. He introduced civil engineer Carmine Casper. Mr. Tucker provided a summary involving the deeds on record and monuments discovered on the site of construction. Because of this discrepancy there is a 5 ft. delta. There was a minor error in the first building permit that was submitted that was approx. a 7 inch delta that we would have needed a variance for. It was a mistake of the engineer and Dr. Padmalingam had no knowledge of that error. Mr. Casper appeared before the Board and acknowledged he was the civil engineer on this project. He said he relied on the deed saying the property line began 35 ft. from centerline of Chestnut and based our topography on that data when doing surveys. *(Mr. Tucker questioned Mr. Casper about deeds, permit plans, centerlines and survey points. Mr. Casper described the project indepth.)* Mr. Casper estimated the monuments may have been put in approximately 35-36 years ago. Upon learning of the difference in survey points Mr. Casper did speak with Mr. Bergstrom. He submitted the "as built" to Mr. Bergstrom. It was set in historic zoning and historic zoning sets most of the setbacks based on the site plan that was approved; the rear yard was always 25 ft. It is not set by the historic district. Mr. Casper was not involved in the Historic process. If you relied on the markers the city put in the variance we would be seeking would be from

25 ft. to 19.1 ft. Mr. Casper confirmed this. If we relied on the original deeds that were used in the first two surveys it would result in a 2% variance. Mr. Casper confirmed this also. There was a survey mistake made from the beginning because the 25 ft. historic setback had not been discovered. Mr. Casper confirmed this.

Mr. Athey questioned the HAC determination. It appears to him they would have set the front yard, side yard requirements. Using a diagram Mr. Carmine showed him what was presented to the HAC to satisfy his question. He asked if they ever sought to find other monuments of adjoining properties when preparing the plan. Mr. Carmine responded that they were looking for points 35 ft. from centerline and these monuments were 5 ft. away from that. In the normal care they go a foot or two of where it should be. Mr. Athey asked how they measured. Mr. Carmine explained and said the distance came within a reasonable distance.

Mr. Harker asked at what point in the process was the monument discovered. Mr. Casper responded the foundation work was done and they were doing the as built. All walls were up and part of the roof was also up. Mr. Harker asked if the monuments were buried. Mr. Casper said they were buried.

Mr. Bergstrom confirmed this is consistent with his findings.

Dr. Padmalingam appeared before the Board and answered a number of questions about the project from his counsel, Mr. Tucker. He first learned of a discrepancy when he contacted Mr. Bergstrom about his driveway being larger. He applied to HAC and it was to be heard on 3/23/06. That day he spoke with Mr. Bergstrom who informed him of the problem with a setback. The foundation was done, the walls were almost done and we were waiting for the roof. He was not aware of any monuments on the property.

Mr. Harker questioned about the size of the sunroom. Mr. Casper said the sunroom would be approximately 7 ft. deep with the 25 ft. setback. He asked how the rear portion (sunroom) lines up with other houses in the back. Dr. Padmalingam said he does not have a good observation to answer. He said if they had known there was a problem before the plan was approved he would have changed his plans.

Mr. Harker (to Mr. Tucker) said under the code, the Board is not permitted to grant a variance where it is a self-imposed hardship. He asked him to address this. Mr. Tucker said they used quick-check factors, and relied on New Castle County's section of state law that mirrors the city's and municipalities statewide and is a standard utilized for area variances throughout the state. He submitted Dr. Padmalingam didn't create the hardship. It was an oversight of the engineer

based on discrepancies in deed records and actual monuments later discovered on the property. If you rely on the deeds it is about a 2% variance; with the monuments it is more like a 23% variance. Dr. Padmalingam did not create this situation.

Comments from the Floor

David Bird, East 4th Street – This is a substantial structure. He feels most people know where their rear property line is located. There is another structure that has been built that appears to be a wall. He said it was built in the last 30 days and questioned what the structure is. He stated numerous professionals were involved with this construction and have been involved in other projects. They are typically bonded. He said 25 ft. is cast in stone for rear yard and he encouraged the Board to consider this. It may be a hardship, but the owner did hire professionals to do the job and this could send a message to other property owners. If someone is responsible, it needs to be torn down.

Mr. Tucker responded by saying it was an honest mistake by a professional. It only says that when mistakes are made there is a relief valve known as the Board of Adjustment. As part of the quick-check standard it speaks to whether there would be an adverse impact to neighbors if the variance is granted and also whether there is an adverse impact to the applicant if it is not granted. There has been no evidence of impact on neighboring properties. There would be a significant cost to the applicant that is a hardship to him through no fault of his own.

Dr. Padmalingam said the wall was part of the plan that was submitted. It was constructed by the builder. Mr. Tucker said the original plan showed the wall and they were not made aware of any setback issue with the wall. The drawings were approved and they were not aware of any error in that regard. Mr. Bergstrom said there are no setbacks for walls.

Dorsey Fisk, 26 E. 3rd Street – She feels this wall goes further than the end of the sunroom and doesn't understand its purpose.

Mr. Tucker said he would gladly speak to this afterwards. It is an issue between the Building Department and us.

Ms. Fisk – She feels the town should be mindful of things like this in town.

Mr. Harker said the wall is not part of the application and is not sure it is relevant to this application. If it violates the code it is another issue that would have to be brought to the building code enforcement officer and if it violates the code, perhaps we might be here another day or it may have to come down.

Nancy Coning, 54 E. 4th Street – At the last HAC meeting the architect said the plans submitted to HAC changed periodically from those submitted originally. It was brought to their attention about three meetings ago that it was overbuilt and extended beyond the original footprint that was approved.

Mr. Athey asked if the “as built” will be submitted to Mr. Bergstrom so the plan can check the plan submitted to HAC and if it is larger there may be an issue that can’t be addressed here tonight. Mr. Tucker confirmed the plan will be submitted and that it has not been overbuilt.

Mr. Harker read aloud City Code Section 230-57, Subsection C, the standard for granting a variance in the City of New Castle.

Mr. Harker made a motion to approve the variance application. Mr. Athey seconded the motion. The motion was approved unanimously.

Mr. Athey stated the reason for his vote is that he feels that while other information could have been found or monuments found, he disputed using the word “error” as he didn’t hear any evidence to indicate an error took place. It is our responsibility to make a rational decision absence of errors and conflicts. Mr. Harker said he recognizes the fact that this is an untimely application in the sense it is an application made after the fact, but he believes it is an application that is typically granted in a Board of Adjustment situation where the nature and size of the real estate, the nature of the use and nature and circumstances surrounding the construction of the project would result in unusual hardship to remove it, and there is no evidence brought before the Board to indicate it is harmful or injurious to the neighborhood. The Mayor commented the engineer acted in good faith and that it is the nature of discrepancies in the historic area to have errors because of the time we started to keep records on monuments and the lack of them.

Adjournment

The meeting was adjourned at 7:50 p.m.

Respectfully submitted,

Debbie Turner
Stenographer

Applicant Exhibit 1 – Plan with the amended application
Applicant Exhibit 2 – Deed
Applicant Exhibit 3 – Plans submitted with the original application
Applicant Exhibit 4 – As built submitted to Historic Area Commission